

1 **UNITED STATES BANKRUPTCY COURT**
2 **EASTERN DISTRICT OF CALIFORNIA**

3 In re:)
4) Case No. 23-90010-B-13
5 MARIA LUZ NAVARRO,)
6) DC No. TMO-4
7))
8 Debtor(s).)
9)
10 _____)

11 **MEMORANDUM DECISION AND ORDER REGARDING VIOLATIONS OF THE**
12 **AUTOMATIC STAY AND SCHEDULING FURTHER PROCEEDINGS**

13 **I.**

14 **Introduction**

15 Before the court is a *Motion of Debtor for an Award of*
16 *Compensatory Damages, Punitive Damages, Attorney Fees and Costs*
17 *Against Scenic Funding [sic], a California Corporation, C&H Trust*
18 *Deed Service, and Attorney Coby Halavais, Does 1-5*, filed by
19 Chapter 13 debtor Maria Luz Navarro ("Debtor"). The motion
20 asserts that C&H Trust Deed Services ("C&H"), secured creditor
21 Scenic Oaks Funding, LLC ("Scenic Oaks"), and Coby Halavais as
22 the attorney for both C&H and Scenic Oaks ("Attorney Halavais")
23 (collectively, unless otherwise noted, "Respondents"), violated
24 the automatic stay of 11 U.S.C. § 362(a) making Respondents
25 jointly and severally liable for attorney's fees and damages
26 (actual and punitive) under 11 U.S.C. § 362(k)(1). Respondents
27 filed a single opposition.¹ The Debtor filed a reply. The
28 parties also filed evidentiary objections.

 The court has reviewed and considered the motion,

¹The opposition reflects that Attorney Halavais represents, and has appeared as the attorney of record for, all Respondents with regards to the current motion. See Local Bankr. R. 2017-1(b)(2)(B).

1 opposition, reply, all related declarations and exhibits, and the
2 evidentiary objections. The court has also reviewed and takes
3 judicial notice of the docket. See Fed. R. Evid. 201(c)(1).

4 By its order issued on July 11, 2023, the court bifurcated
5 the Debtor's motion into two phases: (1) a hearing on August 8,
6 2023, limited to whether the automatic stay was violated; and (2)
7 if it was determined the automatic stay was violated, a separate
8 evidentiary hearing to determine the extent of liability under §
9 362(k). The first phase is satisfied insofar as Respondents
10 admit that the automatic stay was violated. Paragraph 19 of
11 Attorney Halavais' declaration filed with the opposition states
12 as follows: "With apologies to all, the stay violation was
13 inadvertent and immediately rectified once I learned of the
14 instant Bankruptcy filing." Docket 159 at 5:10-12.

15 Respondents' admission makes the August 8, 2023, hearing
16 unnecessary. However, as explained below, further proceedings
17 remain necessary and therefore will be ordered. The evidentiary
18 objections will be addressed at that time.

20 II.

21 Background

22 C&H is the trustee under a deed of trust recorded against
23 the Debtor's home at 5400 Cora Way, Keyes, California ("Debtor's
24 Residence"). The deed of trust secures a loan that the Debtor, a
25 school district cafeteria worker for over 21 years who never
26 missed a loan payment, obtained from Scenic Oaks in May 2021.
27 The Debtor's son, Juan Navarro ("Mr. Navarro"), is a co-signor on
28 the loan.

1 Scenic Oaks sold the loan to Wells Fargo after it closed.
2 It repurchased the loan from Wells Fargo after Wells Fargo
3 asserted that Mr. Navarro misstated his employment status in loan
4 documents.

5 After it repurchased the loan, Scenic Oaks declared the loan
6 in default based on Mr. Navarro's purported misstatement. It
7 then accelerated the loan balance and refused to accept monthly
8 payments from the Debtor. When the Debtor was unable to pay the
9 accelerated loan balance, Scenic Oaks initiated foreclosure
10 proceedings through C&H acting as its duly authorized foreclosure
11 agent and trustee under the deed of trust.

12 In an effort to save her home from foreclosure, the Debtor
13 filed a Chapter 13 petition on January 10, 2023. The Debtor
14 identifies three postpetition acts that she asserts violated the
15 automatic stay of § 362(a): **(1)** issuance of a Notice of Trustee's
16 Sale on January 11, 2023; **(2)** service of the Notice of Trustee's
17 Sale by posting it on the front door of her home on January 13,
18 2023; and **(3)** recordation of the Notice of Trustee's Sale with
19 the Stanislaus County Recorder on January 18, 2023.

20 Respondents do not dispute that any of the foregoing acts
21 occurred or that they occurred on the dates the Debtor asserts
22 they occurred. Paragraphs 8 and 9 of Attorney Halavais'
23 declaration filed with the opposition concede that the Notice of
24 Trustee's Sale was issued on January 11, 2023, at which time it
25 was also sent to a local field agent for service and forwarded to
26 the county recorder to be recorded; (2) ¶ 12 of the same
27 declaration concedes that the Notice of Trustee's Sale was posted
28 on the front door of the Debtor's Residence on January 13, 2023;

1 and ¶ 13 of the same declaration concedes that the Notice of
2 Trustee's Sale was recorded with the Stanislaus County Recorder
3 on January 18, 2023. And as noted above, in ¶ 19 of the same
4 declaration, Respondents admit these postpetition acts violated
5 the automatic stay.

6 It is also noteworthy that Attorney Halavais states in his
7 declaration that he personally performed each of the three acts
8 that violated the automatic stay for C&H acting as Scenic Oaks'
9 foreclosure agent with regard to Scenic Oaks' foreclosure on the
10 Debtor's Residence. Moreover, when Attorney Halavais performed
11 each of the three foregoing acts in the course of the foreclosure
12 process, he also (and simultaneously) represented C&H and Scenic
13 Oaks as clients.²

14 Although the intentional acts that violated the automatic
15 stay are admitted, the unresolved issue that precludes the court
16 from determining if Respondents' admitted automatic stay
17 violations are technical or willful is one of notice. Eskanos &
18 Adler, P.C. v. Leetien, 309 F.3d 1210, 1215 (9th Cir. 2010) ("A
19 willful violation is satisfied if a party knew of the automatic
20 stay, and its actions in violation of the stay were
21 intentional."). Did the postpetition acts that Respondents admit
22 violated the automatic stay occur with notice of the Debtor's
23 bankruptcy filing and, thus, with notice of the automatic stay?
24 Knupfer v. Lindblade (In re Dyer), 322 F.3d 1178, 1191 (9th Cir.

25
26 ²He identified himself as the "Attorney" for C&H in a
27 corporate disclosure statement filed earlier in the case. He
28 identified himself as Scenic Oaks' attorney in prepetition
correspondence to the Debtor and her attorney. And he is the
attorney of record for Scenic Oaks in this Chapter 13 case.

1 2003) (notice of bankruptcy filing is notice of the automatic
2 stay for purposes of § 362(k)); accord Superior Propane v. Zartun
3 (In re Zartun), 30 B.R. 543, 546 (9th Cir. BAP 1983)). The
4 Debtor asserts they did. Respondents assert they did not.

5 The Debtor asserts that a paralegal at her attorney's office
6 provided a female clerk employed by C&H with verbal notice of her
7 bankruptcy filing by telephone on the petition date, *i.e.*,
8 January 10, 2023. The Debtor also asserts that the female clerk
9 with whom the paralegal apparently spoke acknowledged receipt of
10 the notice by requesting written confirmation of the bankruptcy
11 filing and providing a fax number where written confirmation
12 could be sent. And the Debtor asserts that written notice of the
13 filing was faxed to C&H on January 16, 2023.

14 According to Respondents, the Debtor's version of verbal
15 notice never happened. Nor could it. Respondents assert that
16 there is no female clerk employed by C&H who answers the
17 telephone at C&H's office. Instead, according to Respondents,
18 all incoming calls are answered by an automatic call system which
19 directs callers to the appropriate extension none of which are
20 answered by a live person. All calls are apparently routed to
21 voicemail and screened for relevance and a determination as to
22 whether a return call is warranted because the office is staffed
23 by Attorney Halavais alone as a sole practitioner and a large
24 number of sales and irrelevant calls are received. Respondents
25 do not dispute that C&H received written notice of the bankruptcy
26 filing on January 16, 2023, at approximately 2:00 p.m., when they
27 received a facsimile from the Debtor's attorney's office.

28 Resolution of the factual dispute over notice matters

1 substantially. It is determinative as to whether the attorney's
2 fees and damages (actual and potentially punitive) sought by the
3 Debtor under § 362(k) are warranted.³

4 5 **III.**

6 **Discussion**

7 Although on the record before it the court is unable to
8 determine if the admitted violations of the automatic stay are
9 willful for purposes of § 362(k), the court can set parameters
10 for the evidentiary hearing that will follow. In that regard,
11 four provisions of the automatic stay in § 362(a) are implicated
12 with regard to the postpetition issuance, service, and
13 recordation of the Notice of Trustee's Sale.

14 The first is § 362(a)(1) which stays "the commencement or
15 continuation, including the issuance or employment of process, of
16 judicial, administrative, or other action or proceeding against
17 the debtor that was or could have been commenced before the
18 commencement of the case under [Title 11], or to recover a claim
19 against the debtor that arose before the commencement of the
20 case[.]" 11 U.S.C. § 362(a)(1).

21 The second is § 362(a)(3) which stays "any act to obtain
22 possession of property of the estate or of property from the
23 estate or to exercise control over property of the estate[.]" 11
24 U.S.C. § 362(a)(3).

25
26 ³Even if the violations were technical in the sense that
27 they were willful but the Debtor suffered no damages or is unable
28 to prove any, the court must still consider attorney's fees under
§ 362(k). See e.g., Koeberer v. California Bank of Commerce (In
re Koeberer), 632 B.R. 680, 690-91 (9th Cir. BAP 2021).

1 The third is § 362(a)(4) which stays “any act to . . .
2 enforce any lien against property of the estate[.]” 11 U.S.C. §
3 362(a)(4).

4 The fourth is § 362(a)(6) which stays “any act to collect,
5 assess, or recover a claim against the debtor that arose before
6 the commencement of the case[.]” 11 U.S.C. § 362(a)(6).

7 At a very minimum, each of these provisions render the
8 issuance, service, and recordation of the Notice of Trustee’s
9 Sale void without regard to notice and, thus, without regard to
10 whether they are technical or willful violations of the automatic
11 stay. In re Valentine, 648 B.R. 324, 334 (Bankr. E.D. Cal.
12 2022). Respondents appear to acknowledge this insofar as they
13 state that all foreclosure proceedings have been cancelled.

14 As to potential liability for attorney’s fees and damages
15 under § 362(k) if the admitted automatic stay violations are
16 found to be willful, Scenic Oaks’ liability arises as a
17 principal. C&H performed each of the three postpetition acts
18 that violated the automatic stay in its role as Scenic Oaks’
19 foreclosure agent and as the trustee under Scenic Oaks’ deed of
20 trust. If C&H had notice of the Debtor’s bankruptcy filing, then
21 so too did Scenic Oaks as its principal. In re Withrow, 93 B.R.
22 436, 438 (Bankr. W.D.N.C. 1998) (imputing notice to
23 creditor-principal upon a showing of notice to collection agent,
24 and holding creditor liable for the willful § 362(a) violation of
25 its agent); In re Kennedy, 2023 WL 3011246, *6 (Bankr. N.D. Ga.
26 April 19, 2023) (same). Moreover, under California law,
27 principals are liable for the authorized acts of their agents
28 taken in the course and scope of the agency. Shultz Steel Co. v.

1 Hartford Accident & Indemnity Co., 187 Cal. App. 3d 513, 518-19
2 (2d Dist. 1986); In re Oakhurst Lodge, Inc., 2020 WL 598648, *2
3 (Bankr. E.D. Cal. Feb. 5, 2020) (citing 3 Witkin, Summary of
4 Calif. Law, Agency § 168 (2019); Rest.3d, Agency §§ 6.01, 6.02);
5 see also In re Theokary, 444 B.R. 306, 323-24 (Bankr. E.D. Pa.
6 2014) ("general principles of agency law [] hold that a
7 creditor-principal is liable under § 362(k) for the acts of an
8 agent who willfully violates the automatic stay taken when those
9 acts are within the scope of their principal-agent
10 relationship"). Issuing, serving, and recording the Notice of
11 Trustee's Sale certainly fall within the scope of C&H's role as
12 Scenic Oaks' foreclosure agent and they undoubtedly are acts that
13 Scenic Oaks authorized C&H to take on its behalf in the
14 foreclosure process.⁴

15 C&H is also potentially liable for willful violations of the
16 automatic stay as the authorized foreclosure agent for Scenic
17 Oaks that directly performed the three postpetition acts that
18 violated the automatic stay. Jennings v. Parker (In re Parker),
19 2022 WL 15523089, *2 fn. 2 (9th Cir. Oct. 27, 2022) (citing
20 Sternberg v. Johnston, 595 F.3d 937, 943-45 (9th Cir. 2010),
21 *overruled on other grounds*, America's Servicing Company v.
22 Schwartz-Tallard (In re Schwartz-Tallard), 803 F.3d 1095 (9th
23 Cir. 2015) (en banc)).

25 ⁴Scenic Oaks' assertion that it was not directly involved in
26 any of the three postpetition acts that violated the automatic
27 stay is unavailing. A willful stay violation does not require a
28 specific intent to violate the stay. Pinkstaff v. United States
(In re Pinkstaff), 974 F.2d 113, 115 (9th Cir. 1992) (quotation
omitted).

1 And by personally performing each of the three acts that
2 violated the automatic stay for clients represented in the
3 foreclosure process, *i.e.*, C&H and Scenic Oaks, Attorney Halavais
4 would also incur individual liability under § 362(k). In re
5 Connor, 641 B.R. 875, 884 (Bankr. E.D. Tenn. 2022) (“Attorneys
6 may be held liable for violations of the automatic stay as a
7 result of actions they have taken or omissions they have made in
8 representation of their clients.”) (cleaned up)). At the same
9 time, so too would C&H and Scenic Oaks because the authorized
10 acts of their attorney, *i.e.*, Attorney Halavais, in matters in
11 which he represents clients, *i.e.*, the foreclosure process, are
12 imputed to the clients, *i.e.*, C&H and Scenic Oaks. In re Bruel,
13 533 B.R. 732, 789-90 (Bankr. C.D. Cal. 2015). Independently, it
14 is long-settled law that clients are held accountable for the
15 acts and omissions of their attorneys. Pioneer Inv. Servs. Co.
16 v. Brunswick Assocs. Ltd. P’ship, 507 U.S. 380, 396-97 (1993)
17 (citations omitted).

18 19 IV.

20 Conclusion

21 The hearing on August 8, 2023, at 11:00 a.m. is **VACATED** as
22 unnecessary given Respondents’ admission that the automatic stay
23 of § 362(a) was violated. The following scheduling order governs
24 further proceedings regarding potential liability for attorney’s
25 fees and damages under § 362(k):

26 A. Evidentiary Hearing Scheduling

27 Because an evidentiary hearing is necessary, the court will
28 permit the parties to engage in discovery to the full extent

1 allowed in an adversary proceeding under Part VII of the Federal
2 Rules of Bankruptcy Procedure. See Fed. R. Bankr. P. 9014(c).
3 Discovery may begin immediately and will close on **November 6,**
4 **2023.**

5 An evidentiary hearing is set on **Monday, December 11, 2023,**
6 **at 10:00 a.m.** The hearing will be held in the Sacramento
7 Courtroom, Courtroom 32, 501 I Street, Sacramento, California.
8 The parties have placed credibility in issue: Respondents by
9 suggesting the paralegal employed by Debtor's attorney is
10 untruthful and the Debtor through its assertion that Respondents
11 have changed their reason for foreclosure. All attorneys and
12 witnesses must therefore be present in court. No video or
13 telephone appearances are permitted.

14 The evidentiary hearing will address the following:

15 (1) whether C&H had notice of the Debtor's bankruptcy
16 filing on January 10, 2023;

17 (2) whether any or all of the three acts that violated
18 the automatic stay are willful stay violations;

19 (3) if any or all of the three acts that violated the
20 automatic stay are willful stay violations, whether and
21 to what extent attorney's fees and damages are
22 warranted under § 362(k); and

23 (4) if any or all of the three acts that violated the
24 automatic stay are willful violations, whether and to
25 what extent attorney's fees should be awarded even if
26 damages are not warranted or proven.

27 Alternate Direct Testimony Declarations of all witnesses and
28 Exhibits must be filed and served by **5:00 p.m. on Monday,**
November 20, 2023. No witness will be permitted to provide live
testimony without a direct testimony declaration. In-court
testimony will be limited to cross-examination and re-direct.

Binders with Exhibits and all original Alternate Direct

1 Testimony Declarations must be delivered to the Courtroom Deputy
2 by Wednesday, November 22, 2023. Debtor's will label Exhibits
3 numerically. Respondents will label Exhibits alphabetically.

4 Objections to the Alternate Direct Testimony Declarations
5 and Exhibits must be filed and served by 5:00 p.m. on Monday,
6 November 27, 2023. Objections not made are deemed waived.

7 B. Mandatory Settlement Conference

8 Through Federal Rule of Bankruptcy Procedure 9014(c),⁵ the
9 court makes Federal Rule of Bankruptcy Procedure 7016, and its
10 incorporation of Federal Rule of Civil Procedure 16(c)(1) in
11 particular,⁶ applicable to all proceedings in the Chapter 13
12 case.

13 Federal courts have substantial authority and broad
14 discretion under Federal Rule of Civil Procedure 16(c)(1) and
15 their inherent authority to order a mandatory settlement
16 conference. U.S. v. U.S. Dist. Ct. for Northern Mariana Islands,
17 694 F.3d 1051, 1057-58 (9th Cir. 2012); accord Grzeslo v. Sauzo,
18 2023 WL 35979, *2 (E.D. Cal. Jan. 4. 2023). When the court
19

20 ⁵In relevant part, Fed. R. Bankr. P. 9014(c) states:

21 The court may at any stage in a particular matter
22 direct that one or more of the other rules in Part VII
23 [not already applicable in a contested matter] shall
24 apply. The court shall give the parties notice of any
25 order issued under this paragraph to afford them a
reasonable opportunity to comply with the procedures
prescribed by the order.

26 ⁶In relevant part, Fed. R. Civ. P. 16(c)(1) states: "If
27 appropriate, the court may require that a party or its
28 representative be present [at a pretrial conference] or
reasonably available by other means to consider possible
settlement."

1 orders a mandatory settlement conference:

2 If a party or its attorney 'is substantially unprepared
3 to participate—or does not participate in good faith—in
4 the conference,' the district court may, on motion or
5 on its own, issue 'any just orders.' Fed. R. Civ. P.
6 16(f). Additionally, '[i]nstead of or in addition to
7 any other sanction, the court must order the party, its
8 attorney, or both to pay the reasonable
9 expenses—including attorneys fees—incurred because of
10 any noncompliance with this rule.' Fed. R. Civ. P.
11 16(f)(2). Because 'part of the purpose of the
12 sanctioning power is ... to control litigation and
13 preserve the integrity of the judicial process,'
14 '[s]anctions are not only appropriate when the
15 disobedience is intentional but may also be imposed
16 when the disobedience is unintentional.' Pitman v.
17 Brinker Intern., Inc., 216 F.R.D. 481, 484 (D. Ariz.
18 2003).

19 Moreover, 'the purpose of a settlement conference is to
20 facilitate a settlement or to narrow the disparity
21 between the parties.'" Id. For settlement to be
22 possible, both parties must arrive at the settlement
23 conference 'with an open mind and a genuine willingness
24 to meaningfully discuss the strengths and weaknesses of
25 each party's case.' Id.

26 Marco Crane & Rigging Company v. Greenfield Productions, LLC,
27 2019 WL 5066823, *4 (D. Ariz. Oct. 9, 2019).

28 The parties' disputes, both as they pertain to the current
motion and in the broader context of the Chapter 13 case, are all
about money. Given the potential for costly and time-consuming
litigation arising from these monetary disputes, settlement
discussions and an effort to reach a global resolution are
particularly appropriate. Therefore, in exercise of its
discretion, the court will order the parties to participate in a
settlement conference.

The court will provide the parties with one of two options:
(1) participation in the Bankruptcy Dispute Resolution Program in
which the settlement conference will be conducted by an attorney
admitted to practice in the Eastern District of California

1 Bankruptcy Court selected by the court; or (2) with the consent
2 of all parties, a settlement conference before the undersigned
3 presiding judge as the settlement judge. To facilitate an
4 election, by August 15, 2023, the Debtor and Attorney Halavais
5 (on his behalf and on behalf of C&H and Scenic Oaks as his
6 clients) shall file a notice of election substantially in the
7 following form:

8 **Notice of Election Re: Settlement Option**

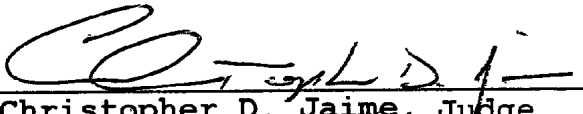
9 The party signing below requests assignment to the
10 Bankruptcy Dispute Resolution Program.

11 - OR -

12 The party signing below affirmatively requests
13 that the assigned presiding judge participate in the
14 settlement conference, and further, the parties waive
any claim of disqualification to the assigned presiding
judge trying the case thereafter if necessary.

15 **IT IS SO ORDERED.**

16
17 **Dated:** August 04, 2023

18
19 
20 **Christopher D. Jaime, Judge**
21 **United States Bankruptcy Court**

**INSTRUCTIONS TO CLERK OF COURT
SERVICE LIST**

The Clerk of Court is instructed to send the attached document, via the BNC, to the following parties:

T. Mark O'Toole
1006 H Street
Modesto CA 95354

Coby R. Halavais
1 Orchard Rd #110
Lake Forest CA 92630-8315

Russell D. Greer
PO Box 3051
Modesto CA 95353-3051